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April 3, 2019

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket Nos. 10-90, 14-58, and 09-197

Dear Ms. Dortch:

Viasat Carrier Services, Inc. responds to the *ex parte* notice submitted on behalf of Jonathan Chambers of Conexon, LLC, on March 25, 2019,¹ and to the letter submitted by Hughes Network Systems, LLC on March 21, 2019,² each addressing Viasat's Reply to Opposition filed in connection with Viasat's pending application for federal Eligible Telecommunications Carrier ("ETC") designation. The points in this submission also respond to assertions made in the letter filed on April 2, 2019, by USTelecom concerning Viasat's pending petition for reconsideration.³

Mr. Chambers's *ex parte*⁴ represents an unfortunate attempt to muddle the record with mischaracterizations of Viasat's position and the Commission's testing regime. To begin with, Viasat is *not* seeking to "lower the MOS standard for voice service in both past and future

¹ Notification of *Ex Parte* Meeting, Conexon, LLC, WC Docket Nos. 10-90, 14-58, and 09-197 (filed Mar. 25, 2019) ("Chambers *Ex Parte*").

² Letter from Jennifer Manner, Hughes Network Systems, LLC, to Marlene H. Dortch, FCC, WC Docket No. 09-197 (filed Mar. 21, 2019) ("Hughes Letter").

³ See Letter of Mike Saperstein, USTelecom, to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Apr. 2, 2019) ("USTelecom Letter").

⁴ According to the filing, Mr. Chambers met with Commission staff on March 20, 2019. See Chambers *Ex Parte* at 1. Under the Commission's rules, Mr. Chambers was required to file an *ex parte* notification "no later than two business days after the presentation"—that is, by March 22, 2019. 47 C.F.R. § 1.1206(b)(iii). But the notification was filed on March 25, 2019—three days late—and the Commission thus may choose to disregard it. See *id.* § 1.1216(d).

auctions,” as Mr. Chambers claims.⁵ Viasat accepts the Commission’s determination that a satellite VoIP provider receiving CAF II support must demonstrate that the supported service meets a MOS of four using a conversational-opinion test. As noted below, Viasat specifically proposed using a MOS of four in connection with CAF II almost four years ago, and committed to meeting a MOS of four even before that. Viasat’s pending petition for reconsideration instead seeks clarification of the logistical details of the testing regime—specifically, on enabling satellite VoIP providers, like other CAF II recipients, to engage in auditable self-testing similar to CAF II broadband data testing, rather than costly third-party testing, and on filling gaps between the laboratory testing procedures specified in ITU-T Recommendation P.800 and the real-world testing approach contemplated in the *Performance Metrics Order*.⁶

By the same token, Viasat has *not* suggested that it “needed the MOS standard changed in order to comply” with the conditions of CAF II funding.⁷ Viasat *has* explained that a grant of its petition for reconsideration would ensure that the Commission’s testing regime is competitively and technologically neutral, minimize unwarranted burdens and costs for supported services, and eliminate uncertainty regarding features of the testing regime.⁸ These interests are vitally important in and of themselves, as they aim to promote fairness and efficiency for participants in the CAF II program. But Viasat does not believe—and has never claimed—that a denial of its petition would prevent it from demonstrating that its future CAF II-supported voice offering will meet a MOS of four. To the contrary, Viasat has consistently made clear that, under its current understanding of the testing parameters, it expects that its future CAF II-supported voice offering will meet or exceed a MOS of four.

Both Mr. Chambers and Hughes also engage in specious efforts to raise questions about Viasat’s ability to demonstrate a MOS of four for its future CAF II-supported voice service. Mr. Chambers purports to recount a meeting from his time at the Commission in 2015 where Viasat supposedly advocated for a lower MOS threshold.⁹ But the publicly filed *ex parte* notification from that meeting directly refutes Mr. Chambers’s characterization—and shows that Viasat specifically advocated *in favor of* a MOS of four standard.¹⁰ The earlier August 2015 letter that

⁵ Chambers *Ex Parte* at 2; *see also* USTelecom Letter at 1 n.4 (suggesting, without further explanation, that Viasat is seeking to “fundamentally alter the basic performance metrics”).

⁶ *See* Petition for Reconsideration of Viasat, Inc., WC Docket No. 10-90, at 2 (filed Sept. 19, 2018); Letter from Matthew T. Murchison, Counsel to Viasat, to Marlene H. Dortch, FCC, WC Docket No. 10-90, at 1 (filed Mar. 13, 2019) (“Viasat Mar. 13 *Ex Parte*”); *see also* *Connect America Fund*, Order, 33 FCC Rcd 6509 (WCB, WTB, & OET 2018) (“*Performance Metrics Order*”).

⁷ Chambers *Ex Parte* at 2; *see also* USTelecom Letter at 1 (claiming, without any factual basis, that Viasat has “compliance concerns”).

⁸ *See, e.g.*, Viasat Mar. 13 *Ex Parte* at 1.

⁹ *Id.*

¹⁰ *See* Letter of John P. Janka, Counsel for Viasat, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90, 14-58, 07-135, 05-337, and 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket No. 10-208 (filed Dec. 18, 2015) (providing notification of 2015 meeting between

formed the basis of that meeting (and that was provided to Mr. Chambers) contained proposals for structuring CAF II and offered a detailed explanation of Viasat's endorsement of using a MOS of four as an alternative to a 100 milliseconds latency requirement.¹¹ Moreover, as Mr. Chambers undoubtedly recalls, Viasat's November 2014 Rural Broadband Experiments application was based on Viasat's ability to achieve a MOS of four or greater, and Viasat reaffirmed in early 2015 its "commitment to meet a MOS of four" in that context.¹² As shown by these few examples, the record in the CAF proceeding demonstrates that Viasat consistently supported a MOS of four standard.

Meanwhile, Hughes rehashes its claim that, when it plugs certain values into "an ITU-T computational tool," the result is a MOS below four.¹³ But there are multiple problems with that claim. First, a "computational tool" is no substitute for *actual* conversational-opinion testing—which Viasat will be required to perform over its CAF II-supported voice service to certify compliance with support conditions. Second, the "primary output" from this computational tool is not a MOS rating but "a scalar quality rating value known as the 'Transmission Rating Factor, R'"¹⁴—a rating of limited, if any, relevance here. The Commission has explained that the R-factor "is a network planning tool and is not designed to measure actual service quality,"¹⁵ and the record shows that it gives significant weight to low latency in a manner that makes it unsuited to evaluating satellite VoIP.¹⁶ And while the computational tool has a function that attempts to convert this R-factor into an *estimated* MOS rating, the ITU has repeatedly emphasized that actual conversational-opinion testing may result in a *different* MOS rating based on a variety of factors.¹⁷

Viasat Chairman and CEO Mark Dankberg and Jonathan Chambers and stating that "[t]he enclosed materials formed the basis for the conversation"); *id.*, Attachment, at 6 ("Requiring that broadband providers provide access to a voice service that meets a MOS of four would ensure that end users can receive a voice service that consumers perceive as being of high quality.").

¹¹ See Letter of John P. Janka, Counsel for Viasat, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90, 14-58, 07-135, 05-337, and 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket No. 10-208, at 6-7 (filed Aug. 21, 2015) ("Viasat Aug. 2015 Letter").

¹² Application for Review, Viasat, WC Docket No. 10-90, at 6 (filed Jan. 5, 2015).

¹³ Hughes Letter at 1.

¹⁴ See International Telecommunications Union, "E-model Tutorial," *available at* <https://www.itu.int/ITU-T/studygroups/com12/emodelv1/tut.htm> ("ITU E-Model Tutorial").

¹⁵ *Technology Transitions; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372 ¶ 218 (2015).

¹⁶ See, e.g., Viasat Aug. 2015 Letter at 6 n.15.

¹⁷ See ITU E-Model Tutorial (explaining that "caution should be exercised when comparing these transformed measures with values of MOS" obtained through other methods); *see also* International Telecommunications Union, Recommendation G.108, at 16-17 (Sep. 1999), *available at* <https://www.itu.int/rec/T-REC-G.108-199909-I/en> (describing differences between

Third, Hughes offers no basis for concluding that the non-latency-related variables it chose to plug into this tool reflect actual conditions on Viasat's network—much less the conditions on the network Viasat will deploy in the future using CAF II support. These efforts to prejudge Viasat's ability to demonstrate a MOS of four over its future CAF II-supported voice service thus are as unfounded as they are improper.

Finally, contrary to the suggestion in Mr. Chambers's letter,¹⁸ the fact that Viasat tested its current voice service before the auction does *not* reflect a concession that it is legally obligated to engage in testing in order to obtain ETC designations. As Viasat has explained, there is no question that, under the Commission's rules, recipients of CAF II support must satisfy testing and certification obligations only *after* they have deployed their networks and are ready to provide supported services.¹⁹ In fact, the Commission has long indicated that it would preempt efforts by states to condition ETC designations on the provision of service in the funded service area prior to obtaining ETC status, as imposing such a requirement would effectively prohibit competitive offerings in high-cost areas.²⁰

These submissions by Mr. Chambers, Hughes, and USTelecom thus provide no basis for denying Viasat's federal petition for designation as an ETC or its petition for reconsideration of the *Performance Metrics Order*. Viasat respectfully requests that the Commission expeditiously grant both petitions.

Respectfully submitted,

/s/

John P. Janka
Matthew T. Murchison
Counsel for Viasat Carrier Services, Inc.

cc: Nissa Laughner
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actual "subjective MOS" testing and values obtained through conversion of the E-model tool's R-factor).

¹⁸ *Cf. Chambers Ex Parte* at 3.

¹⁹ *See Connect America Fund*, Order, 33 FCC Rcd 6509 ¶ 3 (2018); *see also* Reply to Opposition, Viasat Carrier Services, Inc., WC Docket No. 09-197, at 4 & n.10 (filed Mar. 13, 2019).

²⁰ *See, e.g., Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of The South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168 ¶¶ 2, 14 (2000).